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**Bulletin and Directive LIRC 96-05**

**DATE: AUGUST 21, 1996**

**TO: ALL PROPERTY AND CASUALTY INSURANCE COMPANIES MAKING  
RATE AND RULE FILINGS IN LOUISIANA**

**RE: Tort Reform Study**

Tort reform legislation was enacted in the First Extraordinary Session of 1996 of the Louisiana Legislature. This legislation will reduce or cap many claim settlements for liability insurance. The Louisiana Insurance Rating Commission (LIRC), at its May, 1996 meeting, requested an actuarial study to measure the impact that this legislation will have on rates. The study was completed by Tillinghast-Towers Perrin (Tillinghast) and presented to the LIRC at its August, 1996 meeting.

The purpose of this Bulletin and Directive (LIRC 96-05) is to provide a copy of the executive summary from the Tillinghast study, and to give notice that the LIRC will issue a Bulletin and Directive (LIRC 96-06) containing recommendations which combine the Tillinghast estimated reduction in losses due to tort reform with a behavior modification factor. These Bulletins and Directives are issued under the authority of R.S. 22:1404, 1407, 1415 and 1447.

It is your responsibility to demonstrate the effect of tort reform legislation on filed rates. For all rate adjustments, you should use as a guide the recommendations contained in Bulletin and Directive LIRC 96-06. If you have a rate filing previously submitted to the LIRC for consideration, the filing should be amended to address tort reform legislation prior to or at the LIRC meeting at which the filing will be heard. A future rate filing must contain appropriate consideration of these tort reforms before it will be placed on an agenda. If you disagree with the recommendations set forth by the LIRC in Bulletin and Directive LIRC 96-06, please notify the LIRC in writing prior to consideration of your filing and be prepared to make an oral statement before the LIRC in support of your position.

If you have any questions regarding this Bulletin and Directive, please call LIRC staff at (504) 342-5202.

A handwritten signature in black ink, appearing to read "Chris Faser, III", is written over a horizontal line.

Chris Faser, III  
Deputy Commissioner/LIRC

Attachments

# Louisiana Insurance Rating Commission

Estimated Loss Reduction  
Due to 1996 Tort Reforms

PREPARED BY

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Tillinghast-Towers Perrin  
101 South Hanley Road  
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August 19, 1996

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## Scope

The Louisiana Insurance Rating Commission (LIRC or the Rating Commission) requested that Tillinghast—Towers Perrin (Tillinghast or we) estimate the expected impact on insurance losses of the tort reforms referenced in Bulletin LIRC 96-03 dated April 29, 1996. It was agreed that the estimates would be based on available information only. If the Rating Commission concluded that adequate estimates of the impact of these reforms could not be made based on available data, it was agreed that data from Louisiana insurers would be requested. Estimates of the impact of the reforms would then be based on an analysis of this requested information.

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## Distribution and Use

This report has been prepared for the Louisiana Insurance Rating Commission and its staff and advisors. The Rating Commission has requested that copies of the report be made available to certain members of the legislative and executive branches of Louisiana state government in their role as advisors to the LIRC. It also was requested that a copy of this report be made available to each insurer in Louisiana whose rates may be affected by the tort reforms in question.

We were asked to produce a summary report of our findings which may be distributed to the LIRC and its advisors as well as the Louisiana insurers. In addition, we are producing a detailed report that includes exhibits showing our calculations and additional analyses. It is imperative that everyone receiving the summary report be allowed to review the detailed report if they choose. Anyone with questions about the summary report or the detailed report is expected to ask us about anything in the report they do not understand.

No distribution beyond that identified above is authorized without our prior written consent.

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## Reliances and Limitations

Our primary sources of information for this assignment were:

- ▶ Texas Department of Insurance (TDI) closed claim data base
- ▶ Certain claim information provided by the Louisiana Office of Risk Management (LORM)
- ▶ Opinions from various legal experts in Louisiana

We did not verify the accuracy of any of the information provided to us although we did review it for reasonableness.

In some instances we were able to make reasonable estimates of the impact of the recent Louisiana tort reforms based on TDI data. However, it is unlikely that the use of Louisiana closed claims would have produced exactly the same results because of the differences in the legal environments of Louisiana and Texas. Therefore, it should be understood that precise estimates of the impact of the Louisiana reforms are not possible. Our estimates are intended to be reasonable approximations of the impact of the Louisiana reforms, based on TDI data.

The LORM data may be more representative of the Louisiana legal environment than is TDI data. However, the LORM information we needed was in voluminous files that required substantial effort to extract. There was a practical limit to how

many resources could be expended extracting this detailed information. Therefore, we supplemented the analysis of LORM data with some analysis of comparable TDI data. Again, it is unlikely that precise estimates could be made from the analysis of this data.

In some instances there was no data available to us that we could analyze to estimate the impact of certain reforms. We contacted legal experts in Louisiana to be sure we had a sound understanding of the reforms in these instances. Our estimates reflected our understanding based on the conversations with the experts. While we believe this produces generally reasonable results, it is possible that other experts would have had materially different opinions that would have resulted in materially different estimates on our part.

Our estimates are based on actual or perceived behaviors exhibited by insurers and their claimants in the past. Faced with different circumstances in the future, these parties may react differently than they have in the past, particularly on issues such as whether to pursue awards and pre-trial agreements. Such behavioral changes could have a material impact on the changes brought about by the recent Louisiana tort reforms. It is impossible for us to reliably estimate the impact such behavioral changes may have. Note that the Texas Department of Insurance did include a factor to reflect potential behavior modification in the determination of their required decreases last year.

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Throughout this report, losses should be understood to include both losses and allocated loss adjustment expenses.

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# Reforms

There are four reforms we were asked to evaluate:

1. Comparative Fault - Civil Code Articles 2323 and 2324 (B) and (C).  
The degree of fault shall be determined for all parties and no party shall be liable for a greater proportion of the damages than that party's negligence bears to the negligence of all parties. This is referred to throughout this report as "joint & several liability" even though it may involve more than joint & several liability.
2. Punitive Damages - Repealing of Civil Code 2315.3. Exemplary damages for wrongful storage, handling or transportation of hazardous or toxic substances is repealed.
3. Strict Civil Liability - Civil Code Articles 660, 667, 2321 and 2322, 2317.1. In certain circumstances it was not necessary to prove negligence before damages could be awarded. This reform alters some of these circumstances so that



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negligence must be determined. We refer to this reform throughout this report as "strict liability."

4. Limitations of Liability - R.S 13:5101, 5104(B), 5105(D), 5106(D)(3)(4), 5107(D), and 5114. Suits against the state, state agencies or political subdivisions of the state, or any officers or employees thereof have certain damages limited to \$500,000. We refer to this reform as "government agencies."

In addition to the above reforms, it was pointed out that a reform had been implemented to R.S. 9:2800.6 that impacts claims against merchants arising out of the condition of their premises. If there was information available to us in the course of our review of the other tort reforms that would allow us to make some estimate of the impact of this reform, the Rating Commission requested we review that information.

# Conclusions

Based upon our analysis of the available data, supplemented throughout by our judgment, we estimate the reduction in losses due to the tort reforms in question to be as shown in the following table.

Indicated Reduction in Losses Due to 1996 Tort Reforms							
	Joint & Several	Punitive Damages	Strict Liability	Gov't Agencies	Other	Selected Total	
General Liab. - BI	0.8%-1.4%	0.1%-0.6%	1.0%-2.0%	4.1%-6.0%	0.9%	4.0%	9.5%
General Liab. - Non-BI	1.1%-1.2%	0.3%-1.8%		4.1%-6.0%		2.5%	7.0%
Commercial Auto - BI	0.5%-1.4%		0.5%-1.0%	2.3%-2.4%		2.0%	4.0%
Commercial Auto - Non-BI	0.7%-1.2%			2.3%-2.4%		1.0%	3.0%
CMP - BI	1.1%-1.8%	0.0%-0.5%	1.0%-3.0%		1.0%	4.5%	
CMP - Non-BI	0.2%-0.3%	0.0%-1.5%				1.0%	
Medical Prof. Liability	0.4%-1.1%					1.0%	
Other Prof. Liability - BI	0.7%-1.1%	0.0%-0.2%				1.0%	
Other Prof. Liab.-Non-BI	0.1%-2.3%	0.0%-0.6%				1.5%	
Private Pass. Auto - BI	0.2%-3.2%		0.5%-1.0%			3.5%	
Homeowners Liability	2.1%-2.7%		1.0%-3.0%			4.5%	
Farmowners Liability	0.8%-2.4%		1.0%-3.0%			3.5%	
Personal Umbrella	0.3%-0.8%		1.0%-3.0%			2.5%	
Products	1.7%-3.8%					3.0%	
Employers Liab. of WC**	0.0%-0.4%					0.2%	
* The first of the two amounts applies to all classes except government classes and the second applies to just government classes.							
** Provided to LIRC by National Council on Compensation Insurance							

For those coverages not listed here, e.g., private passenger auto property damage liability, these reforms are anticipated to have no impact. Also, the reductions on the prior page apply to losses. The impact on rates will be somewhat less because of the inclusion of expenses unaffected by the reforms in the rates.

In addition to these reductions, based on our calculations and our judgment, we note that there may be other changes brought about by the modification of behavior caused by the existence of these reforms.

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# Summary Analysis

## Joint & Several Liability

In the TDI closed claim data is information about whether joint and several liability impacted each claim. The information was provided by someone at the insurer who may not have had complete knowledge of the details of each case. In many instances the cases were settled out of court and the responses in the TDI data reflected someone's estimates of what would have happened had the case gone to court.

We began by extracting those claims that were identified as being impacted by joint and several liability. On a claim by claim basis, we identified the amount paid prior to the Louisiana reforms. This may have been different than the amounts actually paid in Texas and therefore required a restatement of the historical data. We then reallocated the awards limiting them to the degree of fault identified for each of these claims. The difference between the actual (restated) award and the expected award subsequent to the reform was counted as savings due to the reform. The sum of these savings over all the claims produced the total savings for this reform.

The TDI data included numerous claims that we believe could be impacted by this reform. They are claims in which the award is apportioned differently than the negligence. Our understanding of this reform is that the award will now be

determined in the same proportions as the negligence. However, it is possible that all of the difference will not be savings in the insurance system but rather a reallocation of amounts among insurers.

Based on the above calculations, we have determined the following range of indicated decreases in losses by coverage from the TDI data:

General Liability - BI	0.8% - 1.4%
General Liability - Non-BI	1.1% - 1.2%
Commercial Auto - BI	0.5% - 1.4%
Commercial Auto - Non-BI	0.7% - 1.2%
CMP - BI	1.1% - 1.8%
CMP - Non-BI	0.2% - 0.3%
Medical Professional Liability	0.4% - 1.1%
Other Professional Liability - BI	0.7% - 1.1%
Other Professional Liability - Non-BI	0.1% - 2.3%
Private Passenger Auto - BI	0.2% - 3.2%
Homeowners/Dwelling Liability	2.1% - 2.7%
Farmowners/Ranchowners Liability	0.8% - 2.4%
Personal Umbrella	0.3% - 0.8%
Products - Non-BI	3.6% - 8.5%

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## Punitive Damages

This reform repeals exemplary damages for the wrongful storage, handling or transportation of hazardous or toxic substances. The TDI data base includes information about BI claims that involved "pollution or long-term exposure to toxic material." We estimated the impact of limiting exemplary damages on these claims. The result is the following indicated reduction in losses:

General Liability BI	0.1% - 0.6%
CMP BI	0.0% - 0.5%
Other Professional Liability BI	0.0% - 0.2%

Note that these indications are for only BI losses. Wrongful handling of hazardous materials results in PD losses more often than BI losses. However, the BI losses may be more likely to be accompanied by exemplary damages. Nevertheless, based primarily on our judgment, we estimated the impact of this reform to be three times more on non-BI claims than on BI claims.

The reduction in losses may seem low relative to some initial expectations. However, upon more detailed review, it was pointed out that in Louisiana there has only been one case to reach the appellate courts that involved exemplary damages in conjunction with the handling of hazardous materials. While there had been the potential for substantial amounts of exemplary damages in these cases, the actual historical damages in Louisiana have been quite limited. Also

contributing to these low estimates is the fact that many insurance policies in Louisiana now exclude coverage for exemplary damages.

### **Strict Liability**

There are certain circumstances that have been considered to present an unreasonable risk of harm. These circumstances were considered more dangerous than useful regardless of the benefit they produced. In such case the owner or custodian of the property in question was considered liable for damages involving the property without having to prove the owner's or custodian's negligence. A well-known case involved a property owner's tree that fell on and damaged his neighbor's car. Prior to this reform, the property owner was liable for the damage to the car. Subsequent to this reform, it will be necessary for the car owner to prove the property owner's negligence.

There was no TDI data or readily available information from other sources that was helpful in estimating the impact of this reform. The legal experts we consulted with indicated there would be some reduction in the number of cases in which damages would be awarded, but the amount of the awards should not be impacted. The coverages that likely would be impacted are homeowners, farmowners/ranchowners, general liability and CMP primarily. There is likely to be some minor reduction in losses for private passenger and commercial

automobile liability. Based only on our judgment, we have selected the following expected reduction in losses:

General Liability BI	1.0% - 2.0%
Commercial Auto BI	0.5% - 1.0%
CMP	1.0% - 3.0%
Private Passenger Auto BI	0.5% - 1.0%
Homeowners/Dwelling Liability	1.0% - 3.0%
Farmowners/Ranchowners Liability	1.0% - 3.0%

### **Government Agencies**

This reform limits some amounts recoverable from certain governmental organizations to \$500,000. The amounts recoverable that are limited are exclusive of property damages, medical care and related benefits and loss of earnings, and loss of future earnings. The organizations/parties subject to these limitations are the state, state agencies or political subdivisions of the state, or any officers or employees thereof.

Much of the exposure of governmental bodies is insured or self-insured in Louisiana by the Louisiana Office of Risk Management (LORM). Much of the LORM loss data base was made available to us for this assignment. Based upon our survey of numerous LORM claim files, we estimated the impact on general



liability losses for the government classes to be approximately -5%, and -2.3% for commercial automobile liability.

## **Other**

The TDI data base included losses labeled as slip and fall claims for mercantile classes. We were able to use this data as a base for estimating the impact of the slip and fall reform. This reform now requires that negligence be proven in cases involving a merchant's premises and certain conditions involved in proving that negligence have changed. It is expected that the impact of this reform on slip and fall losses will be minimal. Based on discussions with legal experts, we have concluded that a reduction in slip and fall losses of 10% is not unreasonable. This produces decreases in all general liability BI losses of approximately 1% and a similar amount for CMP BI.

## **Behavior Modification**

As stated in the ***Conclusions*** section of this report, it is not unreasonable for some behavior modification to exist as the result of these tort reforms. Last year when Texas mandated changes due to the package of reforms implemented there, the following "behavior modification" allowances were included:

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Medical Malpractice	3.0% - 5.0%
Products Liability	2.0% - 3.0%
Commercial Auto BI	2.0% - 3.0%
Commercial Multi-Peril	2.0% - 3.0%
General Liability	2.0% - 3.0%
Other Professional Liability	2.0% - 3.0%
Fire, Legal & Contractual Liability	2.0% - 3.0%
Pollution Liability	2.0% - 3.0%
Owners and Contractors Protective Railroad and Liquor Liability	2.0% - 3.0%
Garage Liability	2.0% - 3.0%
Commercial Umbrella	(3.0%) - 5.0%*
Private Passenger Auto BI	1.3% - 2.6%
Homeowners Liability	1.0% - 2.0%
Farmowners/Ranchowners Liability	1.0% - 2.0%
Personal Umbrella Liability	1.0% - 2.0%
Employers Liab. of Workers Comp	2.0% - 3.0%

\* From TDI analysis, "tempering factors (i.e., credibility of data) and adjustment due to change in behavior may result in a -3% to +5% difference in final figure."